THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.25492 of 2005

ORDER:

All Saints Christian Educational Society, Visakhapatnam filed the instant writ petition challenging the letter dated 11.11.2005 issued by the respondent, namely, Visakhapatnam Urban Development Authority (VUDA), as illegal and arbitrary. The petitioner also seeks a direction to the respondent not to insist on the petitioner to vacate the premises till the end of academic year 2005-2006 or in the alternative direct the respondent to allot the vacant space available on the top floor of the newly constructed building to the petitioner.

The petitioner is a registered society. It is running a Law college in Visakhapatnam in the premises obtained on license, admeasuring 6,412 Sq.feet, from VUDA on a monthly rent of Rs.350/- per Sq.feet. The period of license is three years as per the proceedings dated 11.9.2002. VUDA, admittedly, by a notice dated 01.3.2005 asked the petitioner to vacate the premises on or before 31.3.2005. The petitioner did not vacate and also failed to pay rental arrears. It appears, the petitioner made a representation on 14.10.2005 for waiving the late fee levied by VUDA. Considering the said application, by impugned letter, the respondent waived the late fee but requested the petitioner to pay rental arrears in a sum of Rs.7,265/- and also reminded petitioner to vacate the premises, on or before 30.11.2005.

Learned Counsel for the petitioner, Sri K.S.R.Murthy, submits that the petitioner has obtained necessary permission from Bar Council of India and Andhra University to shift to new premises during next academic year, and therefore compelling the petitioner to vacate the premises in the middle of the academic year is illegal. Secondly, he would urge that the period of license is valid upto 23.3.2006 and therefore before the expiry of the license period VUDA cannot ask the petitioner to vacate the premises.

Learned Standing Counsel for VUDA, Ms.Preethi Reddy, opposes the writ petition contending that the writ petition is not maintainable as the petitioner has not specifically challenged the notice dated 01.3.2005 whereunder the petitioner was requested to vacate the premises on or before 31.3.2005. According to her, the petitioner only asked for waiving the late fee and he never sought extension of time. Secondly, she would urge that by notice dated 01.3.2005, the petitioner was requested to vacate the premises having regard to the safety to the general public as well as the licensee and with a view to demolish the existing premises/ shopping complex known as 'Gandhi Place, Phase-II' and making a new construction but the petitioner did not vacate the premises. She invited the attention of this Court to the said notice to emphasize the point that even the Department of Andhra University certified/opined that the licenses premises is not fit for occupation.

As rightly pointed out by the learned Standing Counsel, the petitioner has not challenged the notice issued by the licensee on 01.3.2005 requesting the petitioner to vacate the premises. The impugned order as such is not a notice and it is only a letter accepting the request of the petitioner to waive the late fee. The impugned letter reads as under.

Sir,

Sub:- VUDA – Estate Wing – Payment of rental dues – Waival of late fee & vacation of premises due to dismantle proposal – Reg.

Ref:- 1) Your letter dated 14.10.2005.
2) This office Notice dt.01.3.2005.

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With reference to your letter 1st cited above, your request for waival of late fee is accepted and you have to pay the rental arrears of Rs.7265/- after adjustment of late fee. The same may be paid immediately.

Further, you have been informed in the reference 2nd cited above by a notice to vacate the premises on or before 31.3.2005. But, you have not vacated so far. Hence you are once again requested to vacate the premises on or before 30.11.2005 for construction of new building on the sameplace.

Yours faithfully,

Sd/- D.Muralidhar Reddy,

For Vice-Chairman.

In the absence of any challenge to the notice dated 01.3.2005, the petitioner cannot be permitted to challenge the letter dated 11.11.2005, which was issued to the petitioner accepting the request and reminding the petitioner about the notice dated 01.3.2005. Secondly, the action of VUDA cannot be said to be arbitrary. A reading of the notice dated 01.3.2005 annexed to the writ petition would show that the Department of Andhra University opined that the building is not fit for occupation and it is not safe to the general public as well as the licensee. Therefore, it would not be proper for the petitioner to run a Law college and put the lives of large number of students in peril. Insofar as the alternative relief is concerned, it is always open to the petitioner to approach VUDA for alternative accommodation in the vacant space available on the top floor of the new building. The relationship between the petitioner as licensee and VUDA as licensor is purely contractual and a Writ ordinarily cannot be issued to enforce the conditions of license even if such license is issued by public authority.

The writ petition is misconceived and is accordingly dismissed. No costs.

November 30, 2005. (**V.V.S. RAO,J**)

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